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Writer's Direct Number:
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June 15, 1998

Via Messenger

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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JUN 15 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY


Re: CC Docket 95-155 - Joint Reply to Opposition to Petition for
Reconsideration

Dear Ms. Salas:

Enclosed for filing in the above-captioned proceeding please find an original and 11 copies of the "Joint Reply to Opposition" of the The Direct Marketing Association and the American Car Rental Association. We are also providing an additional copy, which we ask that you kindly date-stamp and return to the messenger.

Please do not hesitate to contact me if you have any questions.

Sincerely,


Heather L. McDowell

cc: T. Power
J. Casserly
K. Martin
K. Dixon
P. Gallant
K. Brown
A. Gomez
R. Smolen

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUN 15 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
) CC Docket No. 95-155
Toll Free Service Access Codes)

JOINT REPLY TO OPPOSITION

Pursuant to section 1.429(g) of the Commission's rules, 47 C.F.R. § 1.429(g), The Direct Marketing Association ("The DMA") and the American Car Rental Association ("ACRA") hereby jointly Reply to the Opposition filed by Sprint Communications Company, L.P. The DMA and ACRA (collectively "Petitioners") petitioned the Commission to reconsider its decision to release vanity and branded toll-free numbers in the 877 service access code ("SAC") on a first-come, first-served basis.^{1/} Sprint's Opposition ignores the Petitioners' further request that, *if* it retains a first-come first-serve approach, the Commission clarify such rules to address the problems of number warehousing, hoarding, and brokering that will result. Specifically, the Petitioners have requested that the Commission at least make clear that under a first-come, first-serve scheme,

^{1/} In Re Toll Free Service Access Codes, *Fourth Report and Order and Memorandum Opinion and Order*, __ FCC Rcd. __, CC Docket No. 95-155 (Adopted March 27, 1998; Released March 31, 1998) ("*Fourth Toll-Free Order*").

when a complainant establishes that another party has attempted to broker a toll-free number in violation of FCC rules,^{2/} the subject number must be assigned to the complainant on request.

The Commission has a responsibility to protect against abuses of its toll-free number distribution system. The first-come, first-serve system invites number brokering, warehousing, and hoarding. Those who are lucky enough to wind up at the front of the line will, for example, be able to subscribe to an 877 number that replicates an existing 800 and 888 vanity number, only to attempt to sell the 877 number to an incumbent subscriber with superior rights and interests in the 877 version. The current anti-brokering rules will not be an effective deterrent to this unscrupulous conduct unless the Commission aggressively enforces them, and quickly responds to complaints from subscribers who detect violations.

Under a first-come, first-serve system, there is no effective remedy for subscribers who are victimized by brokering and, thus, no incentive to complain. The Commission's approach would appear only to allow for release of a number to the general distribution pool as a remedy for a brokering violation, leaving its subsequent assignment subject to the already flawed first-come, first-serve system. Thus, an incumbent 800 vanity-number subscriber who has devoted

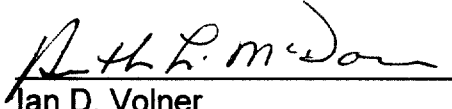
^{2/} 47 C.F.R. §§ 52.105, 52.107.

significant resources to promote brand recognition and reputation by marketing its current number and who is approached by a number broker offering an 877 complement, effectively would have two choices: Pay the "asking price" and be assured of having use of the complementary number, or complain to the FCC and, at best, face the threat of losing the number to yet another broker. If the Commission insists on adopting its first-come, first-serve rules, it must enable the prevailing complainant in a brokering, warehousing, or hoarding complaint before the FCC to have the subject number directly assigned to it, in order to make it worthwhile to complain and, in turn, give effect to the anti-brokering rules.

Thus, the Petitioners ask the Commission not only to reconsider its rejection of a right-of-first-refusal system, but also to reconsider how a first-come first-serve approach would function in conjunction with the anti-brokering rules. If the Commission determines to retain its first-come, first serve approach, it must clarify that when an incumbent subscriber of a vanity or branded number establishes, through a complaint before the Commission, that another party is hoarding, warehousing, or attempting to broker a complementary toll-free number, the subject number (*e.g.*, 800, 888, 877, or 8XX) will be assigned to the complaining incumbent subscriber on request. This procedure is the only way, short of a right-of-first-refusal, to protect incumbent vanity number subscribers

against brokering, and the best means to help ensure that the anti-brokering rules are meaningful and effective in a first-come, first-serve system.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ian D. Volner", written over a horizontal line.

Ian D. Volner

Heather L. McDowell

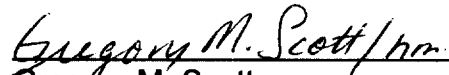
Venable, Baetjer, Howard, & Civiletti, L.L.P.

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Counsel for The Direct Marketing Association

A handwritten signature in black ink, appearing to read "Gregory M. Scott", written over a horizontal line.

Gregory M. Scott

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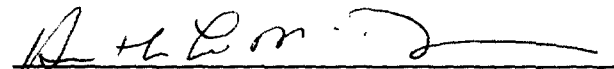
June 15, 1998

CERTIFICATE OF SERVICE

I hereby certify that I have this day delivered a true and correct copy of the foregoing, by postage-paid, first-class mail to:

Leon M. Kestenbaum
Norina T. Moy
1850 M Street, N.W. Suite 1110
Washington, D.C. 20036
Counsel to Sprint Communications Company, L.P.

June 15, 1998


Heather L. McDowell